

KAMIS v. PUBLIC PROSECUTOR[F.C. (Gill Ag. L.P., Ali Ag. C.J. (Malaya) and
Ong Hock Sim F.J.) October 5, 1974][Kuala Lumpur — Federal Court Criminal
Appeal No. 11 of 1974]*Criminal Law and Procedure — Summing up to Jury —
Circumstantial evidence — No miscarriage of justice.*

In this case the appellant had been convicted of murder of a girl aged 11 years. The evidence against the appellant was entirely circumstantial. In his summing up the learned trial judge had explained all the facts of the case and laid emphasis on the evidence of the appellant. He also said that for a court to rely on circumstantial evidence the evidence when considered must point only to the guilt of the accused; it must not be capable of any other interpretation or any other meaning.

Held: in this case, in the light of the evidence, and taking the summing up as a whole it was impossible for the court to say that there had been a miscarriage of justice and therefore the appeal must be dismissed.

[Editorial Note: See "McGreevy v. D.P.P. Revisited" [1974] 2 M.L.J. xxxiii.]

FEDERAL COURT.

Abdul Kadir Kasim for the appellant.

S. S. Murthi (Deputy Public Prosecutor) for the respondent.

Gill Ag. L.P.: The appellant was tried on a charge of murder under section 302 of the Penal Code in the High Court at Kuantan. By a unanimous verdict the jury found him guilty as charged. He was convicted accordingly and sentenced to death. We dismissed his appeal as we were satisfied that on the evidence adduced any reasonable jury would have arrived at the same verdict.

The facts of the case were that the deceased, a school girl aged eleven, failed to return from school on the afternoon of June 19, 1973. An unsuccessful search for her that evening was abandoned at about midnight when it was raining heavily. On the following morning at about 7 a.m. her dead body was found lying buried face downwards in a mud hole with only the buttocks showing. The medical officer who examined the body listed some 16 external injuries consisting of minor abrasions and bruises over various parts of her body, noticeably a large linear horizontal bruise 2" x ½" on the front of the neck and ¼" below this a linear parallel abrasion.

The cause of death was certified as asphyxia initially due to strangulation and finally due to being buried alive after rape. The neck injuries indicated that strangulation could have been caused by a shoe lace which was found at the scene of the crime and subsequently shown to be similar in colour, length, width and weave pattern as the one found on the left green rubber shoe belonging to the appellant.

The evidence against the appellant was entirely circumstantial. A game ranger had seen the appellant sitting in front of a kongsi house not far from the scene of the crime on the afternoon in question. Later, the same game ranger saw the appellant in the rubber land near the scene of the crime. The appellant was then pushing a bicycle carrying a bag, later identified as the deceased's school bag, on the handle bar of the bicycle. After his arrest the appellant led the police

A to a place from where the bag was recovered. He also took the police to a place from where a pair of green rubber shoes belonging to him were recovered. There was a green shoe lace in the left shoe but there was no shoe lace in the right shoe. As we have said, a green shoe lace was found at the place where the deceased's body was found. The chemist's report stated that the shoe lace found near the dead body and the one which was found in the left shoe matched perfectly. The appellant admitted that the shoes belonged to him.

B The appellant gave evidence to say that he had gone to the rubber plantation to cut down bushes and that he found the bag near a place where he had gone to ease himself. He denied that he committed any assault on any girl on 19th or 20th June.

C In his summing-up to the jury the learned trial judge explained all the facts of the case to the jury and laid emphasis on the evidence of the appellant.

D The summing-up was criticized on two main grounds. The first criticism was that the learned trial judge failed to analyse and evaluate the evidence to enable the jury to come to a finding. We found no substance in this criticism inasmuch as the whole of the circumstantial evidence was properly put to the jury and it was made abundantly clear to them that if they accepted the evidence of the appellant that he did not have anything to do with the crime, he was entitled to a verdict of not guilty.

E The other ground was with regard to the judge's summing-up as regards burden of proof. Learned counsel for the appellant said that he had no criticism against what the learned judge said on the question of burden of proof in the earlier part of his summing-up. But he contended that the learned judge had reversed the onus of proof when he directed the jury that even if the appellant need not prove his innocence there must be some explanation by him of the evidence before them. While we agreed that there were some parts of the summing-up which, when taken in isolation, could be said to be open to criticism, the learned judge could not have put the case more favourably for the appellant when he finally directed the jury in the words, "I must warn you that you must consider the accused's evidence and if it is a possible story you will have to give him the benefit of the doubt."

F As regards the case for the prosecution, the learned judge reminded the jury over and over again that "for a court to rely on circumstantial evidence the evidence when considered must point only to the guilt of the accused; it must not be capable of any other interpretation or any other meaning."

G In the light of all the evidence in the case, and taking the summing-up as a whole, it was impossible for us to say that there has been a miscarriage of justice. We accordingly dismissed the appeal.

Appeal dismissed.

Solicitors: *Ariffin & Ooi.*